

# **EXHIBIT 3**

**From:** [Metcalf, Jane \(x2152\)](#)  
**To:** [Philip M. Black](#); [Daniel H. Tabak](#); [Sri Kuehnlenz](#); [Jillian Gray](#); [Feder, Daniel \(x2236\)](#); [Ricardo, Henry J. \(x2340\)](#); [Christine Cesare](#)  
**Cc:** [Patricia I. Avery](#); [Timothy D. Brennan](#)  
**Subject:** RE: Schuman v. Visa - EFTA claim  
**Date:** Friday, June 14, 2024 1:50:37 PM

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Philip,

Thank you for your email. InComm appreciates Plaintiff's reconsideration of the EFTA claim in light of Monday's conference, but disagrees with Plaintiff's proposed approach of filing a Second Amended Complaint essentially taking back the claim. Plaintiff has already amended his complaint for the sole purpose of *adding* the EFTA claim, and InComm, in turn, has invested appreciable resources in analyzing the claim and teeing up a Rule 12 motion on it. (It also appeared from Monday's conference that the Court had invested time and effort in analyzing the parties' arguments on the claim.) Rather than having that effort go to waste, InComm would prefer to see this through and obtain an adjudication of the motion to dismiss the claim.

For these reasons, InComm does not consent to the proposed filing of a Second Amended Complaint. At the same time, as noted, InComm appreciates Plaintiff's reconsideration, and obviously does not wish to waste resources litigating a dispute that is no longer live. InComm therefore suggests the following: InComm will move to dismiss the claim as planned in its forthcoming MTD, but will note in the MTD its understanding that Plaintiff no longer intends to oppose the dismissal of that claim with prejudice. Plaintiff can then confirm this non-opposition in his responsive papers. This preserves everyone's resources, in that InComm can obtain a dispositive ruling on the motion in which it has already invested considerable time and effort; the parties need not waste resources going forward by litigating an issue that Plaintiff is willing to concede; and the Court need not waste additional resources entertaining further substantive argument on that issue. If Plaintiff agrees to proceed in this manner, InComm will agree not to pursue the claim for fees referenced in its pre-motion letter.

Please let us know if this approach is acceptable to Plaintiff. For the avoidance of doubt, I should note that the above reflects only InComm's position – counsel for Visa and Pathward can speak to those defendants' positions.

Regards,  
Jane

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**From:** Philip M. Black <PBlack@wolfpopper.com>  
**Sent:** Thursday, June 13, 2024 11:50 AM  
**To:** Daniel H. Tabak <dtabak@cohengresser.com>; Sri Kuehnlenz <SKuehnlenz@cohengresser.com>; Jillian Gray <JGray@cohengresser.com>; Metcalf, Jane (x2152) <jmetcalf@pbwt.com>; Feder, Daniel (x2236) <dfeder@pbwt.com>; Ricardo, Henry J. (x2340) <hjriscardo@pbwt.com>; Christine Cesare <Christine.Cesare@bclplaw.com>  
**Cc:** Patricia I. Avery <PAvery@wolfpopper.com>; Timothy D. Brennan <TBrennan@wolfpopper.com>  
**Subject:** Schuman v. Visa - EFTA claim

**External: Think before you click.**

Counsel,

We have considered the points you raised in the pre-motion conference on Monday. We continue to believe that Plaintiff's EFTA claim is valid and based on a proper textual interpretation of the statute and regulations, especially considering the statute's declared primary objective of providing individual consumer rights. However, in light of the hearing, we have determined that continued litigation of the EFTA claim is not in the best interest of Plaintiff or the proposed class. Accordingly, we intend to withdraw the EFTA claim via a second amended complaint, as proposed in the attachment hereto. In the interest of efficiency, please let us know if you consent to this amendment, in which case we will file it promptly, without affecting the motion to dismiss briefing schedule. We should also submit a letter to the Court advising of the nature of the amendment and that the briefing schedule can remain in effect.

Thanks,

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Philip M. Black, Partner

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